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Economic Affairs Interim Committee

66th Montana Legislature

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October 2, 2019

To: Economic Affairs Interim Committee

From: Jameson Walker, Legislative Attorney

Re: Administrative Rule Report, October 2019

The Economic Affairs Interim Committee (EAIC) is responsible for reviewing administrative rules promulgated by several state agencies for compliance with the Montana Administrative Procedure Act (MAPA).¹ The following notices are filed with the Secretary of State's Office for publication in the Montana Administrative Register (MAR). Notices are available at <http://www.mtrules.org> (search by notice number).

PROPOSAL NOTICES

Department of Agriculture and administratively attached entities

There are no pending rules.

Department of Commerce and administratively attached entities

There are no pending rules.

Department of Labor and Industry and administratively attached entities

MAR Notice Number: 24-138-76

Subject: Amendment and adoption of rules pertaining to the Board of Dentistry.

Summary: The board proposes to amend 24.138.301 (definitions), 24.138.402 (fees), 24.138.403 (mandatory certification), 24.138.406 (dental auxiliary functions), 24.138.419 (dental hygienist limited prescriptive authority), 24.138.502 (dentist license by examination), 24.138.503 (dental hygienists license by examination), 24.138.505 (dentist license by credentials), 24.138.506 (dental hygienist license by credentials), 24.138.507

¹ The Committee reviews rules promulgated by the following entities: Department of Agriculture, Department of Commerce, Department of Labor and Industry, Department of Livestock, State Auditor's Office, Division of Banking & Financial Institutions, Governor's Office of Economic Development, and Department of Revenue, Liquor Control Division. This report does not represent any action or opinion of the Committee and does not preclude additional action that may be taken by the Committee pursuant to its authority under the Montana Administrative Procedure Act, Title 2, chapter 4, MCA.

(dentist specialist license by credentials), 24.138.508 (dental hygiene local anesthetic certification), 24.138.509 (dental hygiene limited access permit), 24.138.511 (denturist license requirements), 24.138.512 (denturist internship), 24.138.514 (converting inactive to active status), 24.138.525 (reactivation of expired license), 24.138.2105 (reporting procedures), 24.138.2301 (dentist and dental hygienist unprofessional conduct), 24.138.2302 (denturist unprofessional conduct), 24.138.3223, 24.138.3225, and 24.138.3229 (anesthesia standards and continuing education). The board proposes the adoption of New Rule I (approved clinical exam criteria for dentists and dental hygienists) and New Rule II (denturist scope of practice – dentures over implants). The board proposes to repeal 24.138.510 (denturist examination). In general, the board states that the notice updates existing rules and implements House Bill 157 from the 2019 session.

Notes/Hearing: The department held a hearing on October 2, 2019, to consider the notice. The EAIC objected to this notice at its September 11, 2019, meeting. Specifically, the EAIC will look further into New Rule II at its next meeting:

NEW RULE II DENTURIST SCOPE OF PRACTICE – DENTURES OVER IMPLANTS (1)

It is within the scope of practice of a denturist to fit dentures over implants under the following conditions:

(a) the fitting must be performed under the direct supervision of a Montana-licensed dentist;

(b) the denture must be at least partially soft-tissue-borne; and

(c) the denture must be manually removable by the wearer.

(2) "Direct supervision" means treatment by a licensed denturist provided with the intent and knowledge of a licensed dentist and while the dentist is on the premises.

(3) A denturist fitting a denture over dental implants who is not in compliance with this rule may be subject to discipline for unprofessional conduct.

MAR Notice Number: 24-29-347

Subject: Adoption, amendment, and repeal of rules pertaining to certification of workers' compensation claims examiners.

Summary: The department proposes to adopt New Rule I (decisions which must be made by a certified claims examiner), New Rule II (new hires and claims examiner trainees), and New Rule III (reporting of employment status of change or address to the department). The department proposes to amend 24.29.804 (examiners and third-party administrators in Montana), 24.29.813 (definitions), 24.29.821 (certification of claims examiners), 24.29.824 (examination for claims examiners), 24.29.831 (lapse in certification), 24.29.834 (continuing education requirements for renewal), 24.29.837 (review and approval of continuing education courses by department), and 24.29.847 (fees for certification, examination, renewal, and course approval submission). The department proposes to repeal 24.29.811 (purpose of rules), 24.29.817 (applicability of rules), and 24.29.827 (waiver of examination). Generally, the department states that the notice seeks to implement House Bill 757 from the 2019 session.

Notes/Hearing: The department will hold a hearing on October 11, 2019, to consider the notice.

MAR Notice Number: 24-111-27

Subject: Adoption, amendment, and repeal of rules pertaining to the Board of Alternative Health Care.

Summary: The board proposes to amend 24.111.301 (definitions), 24.111.510 (certification for specialty practice of naturopathic childbirth attendance), 24.111.605 (licensure of out-of-state applicants), and 24.111.2103 (midwives continuing education requirements). The amendments are to make terms consistent, add several definitions, and align current application procedures to provide a simpler and more efficient avenue for qualified applicants to achieve Montana licensure. The board proposes to adopt New Rule I (minimum education and experience requirements for midwife and midwife apprentice applicants after January 1, 2020) and New Rule II (direct-entry midwife apprenticeship requirements for midwife apprentice applicants after January 1, 2020). The board states that these rules will assist qualified individuals in obtaining licensure. The board proposes to repeal 24.111.2101 (renewals). The board states that this rule is unnecessary.

Notes/Hearing: The department will hold a hearing on October 16, 2019, to consider the notice.

MAR Notice Number: 24-189-40

Subject: Adoption, amendment, and repeal of rules pertaining to the Board of Psychologists.

Summary: The board proposes to amend 24.189.301 (definitions), 24.189.607 (required supervised experience), and 24.189.2107 (continuing education implementation). The board states that these amendments are necessary to add several definitions and to address a perceived barrier to licensees obtaining postdoctoral supervision in rural Montana. The board proposes to adopt New Rule I (requirements for licensees providing telehealth services). The board states that the rule is necessary to clearly set forth the standards for practicing psychology and behavior analysis services via telehealth methods. The board proposes to repeal 24.189.620 (licensees from other states or Canadian jurisdictions). The board states that the rule is unnecessary.

Notes/Hearing: The department will hold a hearing on October 16, 2019, to consider the notice.

Department of Revenue, Liquor Control Division

MAR Notice Number: 42-1002

Subject: Adoption, amendment, and repeal of rules pertaining to implementing legislative changes to table wine, hard cider, and sacramental wine tax reporting requirements and microdistillery production changes, and updating labeling and packaging requirements.

Summary: The department proposes to adopt New Rule I regarding new tax and reporting requirements. The department states that it is necessary for the department to propose New Rule I to implement House Bill 84 from the 2019 session. The department proposes to amend 42.13.111 (definitions), 42.13.201 (labeling and packaging requirements), 42.13.401 (importation of wine), 42.13.806 (use of outsourced distilled spirits in the

manufacturing of distilled spirits), 42.13.1002 (alternating proprietor on a manufacturer's premises), and 42.13.1003 (contract manufacturing). Generally, the rule amendments seek to implement New Rule I and correct statutory references. The department proposes to repeal 42.12.317 (sacramental wine monthly reports and tax returns) and 42.13.404 (wine reporting requirements). The department states that the repeal of these rules is necessary because of the incorporation of New Rule I.

Notes/Hearing: The department held a hearing on September 30, 2019, to consider the notice.

MAR Notice Number: 42-1003

Subject: Amendment of rules pertaining to implementation of a point-based penalty system and revising procedures relating to revocation, lapse, or suspension of alcoholic beverage licenses.

Summary: The department proposes to amend 42.12.222 (procedure upon revocation, lapse, or suspension of license) and 42.13.101 (compliance with laws and rules). The proposed amendment to 42.13.101 seeks to eliminate the progressive penalty schedule and adopt a point-based penalty system for determination of proposed penalties. The revisions include increasing various fines for noncompliance with the alcoholic beverage code by licensees.

Notes/Hearing: The department held a hearing on September 30, 2019, to consider the notice. Staff for EAIC have received several inquiries relating to this rule notice from stakeholders.

MAR Notice Number: 42-1005

Subject: Adoption and amendment of rules pertaining to Access Control Systems (ACS).

Summary: The department proposes to adopt New Rule I (access control systems). The department proposes to amend 42.12.145 and 42.13.103 to have the rules contemplate New Rule I. Generally, the department states the rules implement Senate Bill 119 from the 2019 session.

Notes/Hearing: The department will hold a hearing on October 15, 2019, to consider the notice.

Department of Livestock and administratively attached entities

MAR Notice Number: 32-18-292

Subject: Amendment of rules pertaining to diagnostic laboratory fees.

Summary: The department proposes to amend 32.2.403. Generally, the department proposes to increase certain fees and to identify additional fees at the diagnostic laboratory. The department estimates that the increase in fees will generate approximately \$260,000 of revenue over an entire fiscal year, based on an anticipated 20,000 accessions and similar testing numbers to previous years, though testing fluctuates significantly with the presence or absence of animal disease.

Notes/Hearing: The department does not anticipate the need to conduct a hearing.

MAR Notice Number: 32-19-298

Subject: Amendment and repeal of rules pertaining to chronic wasting disease.

Summary: The department proposes to amend 32.3.1303 (identification), 32.4.101 (definitions), 32.4.201 (identification of alternative livestock), 32.4.203 (waivers to identification), 32.4.301 (inspection of alternative livestock), 32.4.401 (change of ownership testing requirements for alternative livestock), 32.4.403 (requirements for alternative livestock gametes - ova and semen - and embryos), 32.4.601 (importation of alternative livestock), 32.4.802 (quarantine facility), 32.4.1301 (definitions), 32.4.1302 (requirements for mandatory surveillance of Montana alternative livestock farm cervidae for chronic wasting disease), 32.4.1303 (alternative livestock monitored herd status for chronic wasting disease), 32.4.1309 (import requirements for cervids), 32.4.1311 (management of alternative livestock cervid herds identified as CWD trace herds), and 32.4.1313 (management of CWD positive alternative livestock cervid herds). Generally, the amendments are to update existing rules to reflect current practices, clarify existing terms, remove the requirement to have animals inspected by a veterinarian prior to transport to a veterinary hospital for emergency treatment, and to make rules consistent with USDA chronic wasting disease program standards. The department proposes to repeal 32.4.1312 (management of alternative livestock cervid herds with at least one animal diagnosed with CWD and with low probability of CWD transmission). The department proposes to repeal ARM 32.4.1312 because all herds diagnosed with CWD will be managed regardless of probability of CWD transmission according to USDA program standards.

Notes/Hearing: The department does not anticipate the need to conduct a hearing.

MAR Notice Number: 32-19-299

Subject: Amendment of rules pertaining to importation of diseased animals.

Summary: The department proposes to amend 32.3.202 (requirements for importation), 32.3.203 (importation of diseased animals), 32.3.206 (official health certificate documents for importation), 32.3.207 (permits), and 32.3.214 (special requirements for goats). Generally, the amendments are to implement HB 112 from the 2019 session.

Notes/Hearing: The department does not anticipate the need to conduct a hearing.

State Auditor's Office

MAR Notice Number: 6-260

Subject: Amendment of rules pertaining to establishment, deletion, or revision of classifications for various industries for supplementing the NCCI Basic Manual for Workers' Compensation and Employers Liability.

Summary: The department proposes to amend 6.6.8301. The department states that it is necessary to supplement the NCCI Basic Manual.

Notes/Hearing: The department will hold a hearing on October 16, 2019, to consider the notice.

Division of Banking & Financial Institutions

MAR Notice Number: 2-59-590

Subject: Amendment of rules pertaining to renewal fees for mortgage brokers, lenders,

servicers, and loan originators.

Summary: The department proposes to amend 2-59-1738 (renewal fees). Generally, the department is reducing various license renewal fees by 25%. The department states the reduction is to keep licensing fees consistent with expenditures. In Montana, there are currently licensed:

- 165 mortgage broker entities;
- 171 mortgage broker branches;
- 198 mortgage lender entities;
- 382 mortgage lender branches;
- 160 mortgage servicer entities;
- 113 mortgage servicer branches; and
- 3,206 mortgage loan originators.

Notes/Hearing: The division anticipates no need to conduct a public hearing on the rule notice.

Governor's Office of Economic Development

There are no pending rules.

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